

Arizona Voting Integrity Laws



By Paul Engel

- How far can States go to protect the integrity of their elections?
- Is it racist to limit who can collect early ballots and where you can vote in person?
- What can States expect voters to do to exercise their right to vote?

There have been a lot of claims lately that all voter integrity laws from republicans are racist while all from democratic are a move toward free and fair elections. Beyond the partisan propaganda, a recent case at the Supreme Court asked the question if Arizona's election laws are racist? Specifically, does the out-of-precinct policy or ballot-collection law violate Section 2 of the Voting Rights Act?

Voting Rights Act

Let's start with the Voting Rights Act. The Democratic National Committee (DNC) claimed that Arizona's voting laws violated section 2 of this act.

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.

[52 U. S. C. §10301](#)(a) – Voting Rights Act

Subsection (a) of the Voting Rights Act is Congress making law that's necessary and proper to execute the Fifteenth Amendment

to the Constitution.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude

U.S. Constitution, Amendment XV

The Voting Rights Act went on to detail what might deny someone the right to vote.

(b) A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

52 U. S. C. §10301(b) – Voting Rights Act

There are a few things to notice with this part of the legislation. First, it's not enough to show that a single circumstance of discrimination based on race or color is a violation of the law, it's the totality of circumstances. Second, since this act covers both elections and nominations to office, it would apply to primaries and caucuses as well. Also, this law does not establish a quota. There is no right to have a certain number of those elected to office based on their proportion of the population.

Now, let's get to the meat of the law as it relates to this

case.

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52 U. S. C. §10301(b) – Voting Rights Act

There are several ways the election process could not be equally open to a group based on race or color. While the most obvious, a law restricting such access would be a violation, the law takes into consideration other ways of unlawful discrimination.

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52 U. S. C. §10301(b) – Voting Rights Act

This is what the DNC alleged in their lawsuit. That two parts of Arizona's election law provide less opportunity for blacks, American Indians, and hispanics to vote. The first was the law requiring that ballots cast in the wrong precinct not be counted, the second that only certain people are allowed to collect early ballots was claimed to be enacted with discriminatory intent. Let's look at these complaints separately.

Precinct Voting

First, Arizonans who vote in person on election day in a county that uses the precinct system must vote in the precinct to which they are assigned based on their address.... If a voter votes in the wrong precinct, the vote is not counted.

Brnovich v. DNC

Some counties divide themselves up into voting precincts.

According to Arizona law, citizens must vote in the precinct where they live. According to Justice Kagan, and justices Breyer and Sotomayor, who joined in her dissent...

...the out-of-precinct policy—results in Hispanic and African American voters' ballots being thrown out at a statistically higher rate than those of whites.

[Brnovich v. DNC](#)

Does the fact that hispanic and black voters cast their ballots in the wrong precinct at a higher rate than white (a fact I did not find the dissent providing any evidence of) mean that they have less opportunity to vote? Justice Kagan also claims that Arizona has more offenders of their out-of-precinct law than any other state. Again, I ask the question, how would the fact that out-of-precinct voting happens more often in Arizona than other states show that the law provides less opportunity to vote based on race or color? According to the majority of the court, it doesn't.

Having to identify one's polling place and then travel there to vote does not exceed the "usual burdens of voting." ... In addition, the State made extensive efforts to reduce the impact of the out-of-precinct policy on the number of valid votes ultimately cast, e.g., by sending a sample ballot to each household that includes a voter's proper polling location. The burdens of identifying and traveling to one's assigned precinct are also modest when considering Arizona's "political processes" as a whole. The State offers other easy ways to vote, which likely explains why out-of-precinct votes on election day make up such a small and apparently diminishing portion of overall ballots cast.

[Brnovich v. DNC](#)

Third-Party Ballot Collection

Next, let's look at the second claim by the DNC, that limiting

third-party ballot collection is racist.

Arizona's law mostly banning third-party ballot collection also results in a significant race-based disparity in voting opportunities. The problem with that law again lies in facts nearly unique to Arizona—here, the presence of rural Native American communities that lack ready access to mail service.

[Brnovich v. DNC](#)

At first, this argument by the dissent seems to have merit. However, as I reviewed their argument, one thing stood out. Justice Kagan only discussed the option of mailing in an early ballot. The majority of the court noted that postal service is only one of several methods of sending in early ballots:

Arizonans can submit early ballots by going to a mailbox, a post office, an early ballot drop box, or an authorized election official's office.

[Brnovich v. DNC](#)

The majority also compared the effort required to find a mailbox, post office, ballot drop box, authorized elect officials office, or a family member, household member, or caregiver to do so for you, with the “compelling interest in preserving the integrity of its election procedures”. Dissent mentioned that it's a crime in Arizona for someone to tamper with a ballot, but as we've seen, laws don't stop people from committing crimes. While the dissent agrees with the District Court that:

“tamper evident envelopes and a rigorous voter signature verification procedure” protect against any such attempts.

[Brnovich v. DNC](#)

Recent elections show that's not entirely true, with significant problems with signature verification reported in Nevada, Texas, Michigan, and Georgia. Furthermore, while such

procedures may limit the tampering with ballots, they do nothing to prevent the introduction of fake ballots into the system by third-parties with political agendas.

Conclusion

Again, setting aside the partisan question, do the Arizona laws provide unequal opportunities for people of all races and colors to vote? Not inherently, though a case could be made that there needs to be sufficient legitimate ballot drop off locations where postal locations are not readily available. I decided not to go through the legal mumbo-jumbo this time, and there was plenty, but to focus on the question of racism, since it's used as a bludgeon so often in society today.

As the court found, it's not racist to put in basic laws to insure voter integrity. It's not racist to require that people vote in the county or precinct where they live. And it's not racist to limit who has access to the ballots before they are counted.

Sometimes I wonder who is racist: The person claiming everyone's vote should be protected, or the one who claims rules to limit opportunities for fraud are racist?

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